

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

IN RE. FRANCOIS PREVAL  
DEBTOR.

CHAPTER 13  
CASE NO. 07-17914-JNF

DEUTSCHE BANK NATIONAL  
TRUST COMPANY, AS TRUSTEE,  
it's successors or assigns,

Movant.

v.

FRANCOIS PREVAL

Debtor.

MOTION OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AS  
TRUSTEE FOR RELIEF FROM THE AUTOMATIC STAY AND FOR LEAVE  
TO FORECLOSE MORTGAGE

Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc. Asset Backed Pass Through Certificates, Series Quest 2005-X2 under the Pooling and Servicing Agreement dated as of September 1, 2005, Without Recourse (hereinafter "Lender") a secured creditor, hereby moves this Court for Relief from the Automatic Stay pursuant to 11 U.S.C. Section 362(d) and for leave to foreclose a certain mortgage encumbering the property owned by the Debtor and known as 79 Belnel Road, Hyde Park (Boston) a/k/a Mattapan (Boston), Massachusetts. In support of this Motion, Lender states as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 and 28 U.S.C. 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code (the "Bankruptcy Code"). This proceeding is a "core" proceeding as this term is defined in the Code.

2. On December 13, 2007, Francois Preval (hereinafter the “Debtor”) filed a voluntary petition in Bankruptcy. The Debtor’s plan has not been confirmed.
3. Lender is the current holder of a certain note and mortgage given by Debtor to Ameriquest Mortgage Company dated September 23, 2004 in the original amount of \$337,500.00 recorded with Suffolk County Registry of Deeds in Book 35601, Page 235, (the “Mortgage”). Reference is made to the assignment of mortgage by Ameriquest Mortgage Company to Deutsche Bank dated March 19, 2008 a copy of which is attached hereto as Exhibit A. Citi Residential Lending, Inc. services the Debtor’s mortgage account on behalf of Deutsche Bank National Trust Company as Trustee.
4. The Mortgage encumbers real property known as 79 Belnel Road, Hyde Park (Boston) a/k/a Mattapan (Boston), Massachusetts (hereinafter the “Property”). A copy of the Note and Mortgage are annexed hereto as Exhibits “A” and “B”. The Mortgage is in first lien position. Aside from the Property, there is no other collateral the Debtor’s obligation to Lender under the Note.
5. The Debtor has defaulted on the Note and Mortgage by failing to make post-petition payments to Lender.
6. As of March 7, 2008, the balance due Lender on the Note was approximately \$416, 980.51 (may not include recent escrow advances). The full amount of the Lender’s claim together with allowable post-petition interest, reasonable attorneys fees, court costs, and other recoverable expenses is secured by the Mortgage.
7. The fair market value of the Property is \$389,453.00 based upon Debtor’s schedules. The liquidation value of the Property is \$367,704.44 based upon a usual and customary broker’s commission of \$19,472.00 (5% of stated fair market value), deed stamps of \$1,775.91 (\$4.56 per thousand) and \$500.00 in miscellaneous estimated closing costs.
8. As of the filing date of this motion, Lender has not received post-petition mortgage payments from the Debtor. The currently monthly payment is \$3,479.59.

9. As of the filing date of this Motion, Debtor owes Lender a total post-petition arrearage of \$11,918.15 calculated as follows:

- 3 monthly payments (1/1/08-3/1/08) at \$3,479.59	\$ 10,438.77
- 2 Late Charges (1/08-2/08) at \$104.39	\$ 208.78
- Escrow Advance (Tax)	\$ 570.60
- Motion Fees and Costs	\$ 700.00

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Total Post Petition Arrearage	\$ 11,918.15
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10. The pre-petition arrearages owed to the Lender are estimated at \$77,274.18.

11. In addition to the Mortgage to Lender, there other outstanding liens on the Property, as follows:

TYPE	NAME	AMOUNT	BK/PG
1 <sup>ST</sup> Lien	Deutsche Bank/Lender	\$416,980.51	35601/235
<u>Tax Taking</u>	<u>City of Boston</u>	<u>\$ 1,789.46</u>	<u>39017/12</u>
TOTAL		\$418,769.97	

The total of all encumbrances on the Property is approximately \$418,769.97.

12. Lender is entitled to Relief from the Automatic Stay for cause pursuant to Section 362(d)(1) of the Code inasmuch as the Debtor has failed to make any post-petition payments to the Lender as set forth herein in contravention of the terms of the Note and Mortgage and the Property is not necessary to an effective reorganization of the Debtor. As further cause, according to the trustee's website, the Debtor is \$1,216.00 delinquent in his plan payments as of March 11, 2008 (see Exhibit D attached).

13. Lender is entitled to Relief from the Automatic Stay pursuant to Section 362(d)(2) of the Code in that the Debtor does not have any equity in the Property and in that the Property is not necessary to an effective reorganization of the Property.

WHEREFORE, Lender requests that this Honorable Court:

(a) Grant Lender Relief from the Automatic Stay pursuant to 11 U.S.C. Section 362(d) and for leave to Foreclose Mortgage, allowing Lender, its successors or assigns to foreclose said mortgage (including, at its sole option, leave to accept a deed-in-lieu of foreclosure from the Debtor, her heirs, successors, assigns or transferees); and for

it or a third party purchaser to prosecute summary process proceedings to evict any persons residing in the Property.

- (b) In the alternative, order Debtor to provide Lender with adequate protection of its claim; and
- (c) Grant such other Relief as this Honorable Court may deem just.

Date: 3-25-08

Deutsche Bank National Trust Company, as  
Trustee  
By its attorney,

/s/ John S. McNicholas

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In re:  
Francois Preval  
  
Debtor

Chapter 13  
CASE NO. 07-17914-JNF

CERTIFICATE OF SERVICE

I, John S. McNicholas, do hereby certify that I have served a copy of the Motion of Deutsche Bank National Trust Company, as Trustee for Relief from the Automatic Stay and for Leave to Foreclose Mortgage this 25<sup>th</sup> day of March, 2008, electronically on **Michael Van Dam** as attorney for the Debtor, **Carolyn Bankowski**, Chapter 13 Trustee, **John Fitzgerald**, Assistant U.S. Trustee, and by first class mail, postage prepaid, upon the parties listed below.

/s/ John S. McNicholas  
John S. McNicholas, Esq

**Francois Preval**  
79 Belnel Road  
Boston, MA 02126

**Michael Van Dam**  
Van Dam & Traini, LLP  
60 William Street  
Suite 300  
Wellesley, MA 02481

**City of Boston**  
Tax Collector's Office  
One City Hall Square  
Boston, MA 02201

**Dept of the Treasury**  
IRS  
15 New Sudbury St.  
PO Box 9112 Stop 20800  
Boston, MA 02203

**Massachusetts Department Of Revenue**  
100 Cambridge Street  
P.O. Box 9564  
Boston, MA 02114

**Gary S. Goldstein, D.M.D., P.C.**  
50 Stainford Street. Suite 303  
Boston, MA 02114

**Gary S. Goldstein, D.M.D., P.C.**  
c/o Richard Schlesinger  
11 Beacon Street, Suite 632  
Boston, MA 02108

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

IN RE. FRANCOIS PREVAL  
DEBTOR.

CHAPTER 13  
CASE NO. 07-17914-JNF

**ORDER GRANTING DEUTSCHE BANK NATIONAL TRUST COMPANY, AS  
TRUSTEE RELIEF FROM AUTOMATIC STAY AND FOR LEAVE TO  
FORECLOSURE MORTGAGE**

This case having come before the undersigned United States Bankruptcy Judge for the District of Massachusetts, upon request of Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc. Asset Backed Pass Through Certificates, Series Quest 2005-X2 under the Pooling and Servicing Agreement dated as of September 1, 2005, Without Recourse ("Deutsche Bank") for Relief from Automatic Stay pursuant to 11 U.S.C. Section 362 (d) and For Leave to Foreclose Mortgage; and no objection having been filed, or after a hearing thereon, as the case maybe, and after proper notice was given;

**WHEREFORE**, the Court grants Relief from Automatic Stay to Deutsche Bank and leave to foreclose its Mortgage encumbering the real property known as 79 Belnel Road, Hyde Park (Boston) a/k/a Mattapan (Boston), Massachusetts by entry and by the power of sale recorded with the Suffolk County Registry of Deeds in Book 35601, Page 235.

**NOW THEREFORE**, it is hereby ORDERED, ADJUDGED AND DECREED that Deutsche Bank, its successors or assigns, is granted Relief from the Automatic Stay to seek to foreclose the mortgage (including, at its sole option, accepting a deed-in-lieu of foreclose from the Debtor, his heirs, successors, transferees or assigns or offering, providing and entering into any potential forbearance agreement, loan modification, or other loan workout with the Debtor) recorded with the Suffolk County Registry of Deeds in Book 35601, Page 235 by entry and by exercise of the power of sale contained in the mortgage and leave to seek to proceed with summary process proceedings to evict any persons residing in the Property, in accordance with applicable state and federal law.

Date: \_\_\_\_\_

\_\_\_\_\_  
Joan N. Feeney  
United States Bankruptcy Judge